1: Gillin E-5 (1932-33)1936 SR9 Carib SR9

CRIME AND PUNISHMENT

681
626

LAW and the administration of justice among the Barama Caribs are confusing to the civilized mind because, generally speaking, they lack explicitness. As is the case with many primitive groups, therefore, it is necessary to study behavior and attitudes under this head from the functional point of view. Thus broadly considered, law is simply that body of opinion within a group which regulates the behavior of the members of the group. The law performs this function in a twofold manner. First, it defines those actions which are considered offensive to the group as a whole or to individual members thereof. Second, it provides punishments for such offensive actions. The administration of justice, on the other hand, as distinguished from the body of the law itself, we may say has the following functions: first, determining whether or not an offense has been committed; second, fixing responsibility of guilt; third, designating the manner of carrying out the proper punishment or retribution and naming the agents, agencies, or assisting parties, if any, involved. These, I believe, are functions which we may ascribe to law and justice in all cultures. They are functions which lie at the basis of group life and are implied in the continued existence of any organized group of human beings who are living together in society. Without the performance of such functions in one guise or another, the group speedily disintegrates under the disrupting strain of endless unresolved disputes. Such functions are not, however, always obvious; they may be performed formally or informally, publicly or privately, by group or by individual action.

671

Among the Caribs, the publicized, formal aspects of the performance of the legal and judicial functions are minimized.[1] There is in this society no formal enactment of rules of conduct, either by decree or by legislation, there is no constituted legislative

[1] "There was apparently no such thing as public punishment, except perhaps in the case of adultery among the Orinoco Carib, where the whole village populace dealt with the guilty parties. Certainly of the island Carib it is said they know not what it is to punish publicly, or to observe any form in the execution of justice; nay, they have no word in their language to signify justice or judgment." Roth, 1924, *An Introductory Study of the Arts, Crafts, and Customs*, p. 557.

"La Justice, chez les Caribes, n'est point exercee par le Capitaine, ni par aucun Magistrat: Mais tout de meme que parmy les Toupinambous, celuy que se tient offensé entr'eus, tire de son adversaire telle satisfaction que bon luy semble, selon que la passion le luy dicte & que sa force le luy permet. Le public ne s'interesse point dans la recherche des crimes." de Rochefort, 1658, *Histoire naturelle et morale des Iles Antilles de l'Amerique*, p. 467.

1: Gillin E-5 (1932-33) 1936 SR9 Carib SR9

assembly, nor is any individual endowed with the authority to make regulations for the other members of the group. The Indians are, of course, without writing. And, as might perhaps be expected under such conditions, there is also an absence of what might be called courts or judges. How, then, are the legal and judicial functions, which we have just mentioned as being necessary for group life, performed? Let us look for a moment more closely at the social organization in an effort to throw more light on the question.

The factors of tribal unity are territory, language and certain culture traits which are held in common, but are distinct from those of other tribes. Within itself, however, the tribe as such has no political functions and little social importance. The political unit is the settlement, a group varying in size from fifteen to fifty individuals who live and cultivate fields in the same immediate vicinity. These groups are located at wide intervals, usually in the jungle back from the river; and contact between them is consequently not close. Over each settlement is a headman whose authority, however, is decidedly limited and without sanctions. The headman is generally chosen by acclaim for life, or for the term of the existence of the settlement, by the adult men of the group. Several factors enter into his choice: his personality, his economic power, his physical strength. Occasionally a son or other relative of a former headman may be chosen, although such a relationship is by no means the deciding factor. In so far as the headman's personality carries weight, his opinions are respected and in that sense might be construed as part of the law, but few sanctions pertain to him which are not included among the prerogatives of the other members of the group as well. In other words, the headman has no special power to enforce his orders, and in case they are violated, punishment of the offender follows the lines laid down for all personal offenses.

As has been already stated, there is no constituted law-making body or legislative council. It is true, of course, that the adult men of the settlement do consult together on a great range of matters, but these consultations usually take the form of individual exchanges of opinion, much as gossip and conversation take place among ourselves. The only occasion on which all the men of the settlement are likely to be together is during one of the

1: Gillin E-5 (1932-33)1936 SR9 Carib SR9

626 periodic drinking bouts or sprees, which are sociable rather than
623 legislative gatherings. On these occasions opinions are naturally exchanged, but such interchange can no more be considered legislative enactment than the informal airing of views which takes place in our own society among men, for instance, at a dinner party, smoker, or farmers' picnic. In short, there is no organization for debate or for the determination of the group will and, naturally, no provision for the codification of law.

671 The law of this society, in other words, is customary and tradi-
626 tional law. It is doubtless subject to change, as in the long run are all social phenomena. But, as one would expect *a priori*, and also on the basis of information obtained from older informants, I believe that such change is unconscious and probably much slower
[867] than is the case with most codified legal systems. A Carib child is brought up to know what is considered right and what is considered wrong. By the time he reaches adulthood he knows what his rights and obligations are in any situation within his culture. What we are here calling the principles of law and justice are, consequently, as integral parts of everyday life to a Carib as, for instance, the necessary functions of his body. Such an unconscious assimilation of the law is workable among these people because the simplicity of the society limits the number of possible situations in which an individual would be called upon to exercise his knowledge of legal rights and duties. In a more complex social organization, on the other hand, the ramifications of relationships would seemingly demand a greater specialization in legal and juridical matters than is necessary here. Because everyone is well informed regarding the customary and traditional rules of conduct, the Caribs have little need for self-conscious law-making.

The distinctions between public and private offenses, between criminal and civil law, which play so large a part in the legal concepts of the higher cultures, have little importance among the Caribs. A distinction is present, in the native consciousness, however, between what we may call social and religious offenses, between offenses against human beings and offenses against spiritual powers. It is one thing to trespass on the rights of a fellow man and another thing to transgress a religious tabu. Breaking of a tabu is automatically punished only by the spiritual powers concerned, whereas the punishment of an offense against a human

1: Gillin E-5 (1932-33) 1936 SR9 Carib SR9

being involves the human factor. This section is primarily concerned only with the secular aspects of law and justice, in so far as they can be distinguished. Examples of a positive and of a negative religious rule may be found in the section on Religion.

The infringement of a religious rule of law brings unpleasant results, but there is frequently no idea of obeying the rule as a good in itself. A Carib is surrounded by a vast army of spirits, spirits of the bush and of the streams. Some are characteristically mischievous or malevolent, others are merely finicky and jealous of their rights, which include the treatment to which they are entitled. A Carib must follow the rules of conduct which will keep him out of trouble with the spirits. When he wants positive responses from the supernatural powers, he consults a medicine man or piaiyen. It is practically impossible for a layman to attract the favorable attention of the spirits directly.

On the secular side, law and justice are highly personal. Only in cases, to be described later, in which an individual by the multiplicity and pertinacity of his offenses makes himself a public nuisance or a public menace do the members of the group take united action against him. And in such cases it appears that the group action is taken as the result of a sum of individual grievances rather than from a conscious sociological consideration for the welfare of the group as an entity.

Practically all secular offenses are punished by the victim, or as we would say, the plaintiff, who is assisted in certain cases by specialists having mastery of techniques involving spiritual powers. A man's brothers, real or classificatory, will assist him in these matters upon occasion. The latter practise furnishes the basis for a loose sort of collective responsibility. Signs of a formalized grouping of relatives are, however, lacking.

In a group such as this, where public law is all but excluded by private law, little attention is paid to abstract ideals of right and wrong. A Carib is only mildly interested in offenses suffered by other individuals. Adultery, for example, is regarded as a delightfully exciting game except when one's own wife becomes involved. Retribution is therefore the important factor in punishment.

The most serious offenses are homicide, poisoning, use of sorcery, theft, and adultery. Homicide is justifiable when used as retribution for a clear case of adultery or when it is obviously due to

1: Gillin E-5 (1932-33)1936 SR9 Carib SR9

said, first, that there can be no doubt that such beliefs do exist. Whether or not, on the other hand, this cult actually exists I am unable to say with certainty, because none of my informants would admit having used this method of punishment, nor was any of the several hundred men with whom I came in contact pointed out as being, now or formerly, a member of the cult. But examples of former members of the tribe killed as kanaimas were recited. Such findings are, of course, perfectly in consonance with the beliefs regarding the cult, because discovery of membership means instant death at the hands of non-members. On the theory that where there is so much smoke there must be some fire, I am inclined to believe that there is such a cult of avengers, voluntary outcasts who, with the aid of black magic, devote a period to vengeance and possibly to purely malicious mischief. Nevertheless, it seems that many of their activities are grossly exaggerated parts of the folk-lore, and that many undesirable phenomena and uncomfortable bodily symptoms of other origin are erroneously attributed to them. In any case, the mere fact that they are believed to be effective agents of punishment justifies a consideration of the subject in a discussion of Carib penology.

So much for the personal methods of punishment and retribution. Occasionally a member of a group acquires a reputation among his fellows as an undesirable character. He may repeatedly pilfer from others' fields; he may trouble the women, be lazy, show himself ungenerous, constantly pick quarrels, or make himself obnoxious in other ways. The men of the settlement will talk to him, but if he does nothing to improve his position in their eyes, he will be advised to leave on pain of having life made very unpleasant for him. If he persists in remaining, he will find that he and his family are social outcasts; they are not invited to drinking parties; he will be unable to borrow anything; he will get no help in hunting, fishing, field cutting, canoe building, or other activities in which the men assist one another, nor will his wife receive aid in her occupations; his household will be excluded from the water-hole and bathing place. In short, he will lose all advantages of group life. In aggravated cases, the other men may beat him or even kill him, if he fails to take the hint. Ostracism within the group and violence are, however, seldom necessary. Such a man with a vestige of common sense "clears out while

1: Gillin E-5 (1932-33) 1936 SR9 Carib SR9

the going is good." I know of one man on the Barama who has been ejected from six consecutive settlements in this way, so that he has become a permanent outcast. 626

It is apparent that the great majority of punishments are handled by individuals. The tendency is to carry out the retaliation as secretly as possible. But why this bashfulness and fear of coming out into the open when settling accounts with a wrongdoer? The Caribs, when questioned directly, reply that secrecy prevents further reprisals and also prevents the culprit from protecting himself against a deserved punishment. I believe that the social function of keeping these matters under cover is to prevent rifts from reaching the surface, so to speak, and thus splitting the group apart. A Carib group lacks strong central authority of any kind. In the absence of adequate political, judicial, or police authority, secretive methods of punishment have evolved as the only possible means of enforcing the "law" without destroying group life. When a man sets out to punish an offense he usually attempts to keep his activities secret, not only from the object of his punishment, but also from other members of the settlement. Only rarely is open violence resorted to or are other members of the group, such as relatives, admitted to the case. 627 182 621

It may be asked, however, if the looseness of the group is not due to the unorganized condition of the legal and penal programs. It is obvious that the absence of a socialized or public method of determining guilt, such as a court, leaves many of the antagonisms in society uncomposed. It is true that cases which come out into the open and are punished openly, such as the killing of the adulterer, appear before the court of public opinion. But many grievances, as we have seen, are handled secretly, and the guilt of certain parties is often based only on suspicion. In such cases punishment may fall on innocent parties, who naturally take offense and retaliate. Consequently, the solidarity of the group is likely to suffer.

Ignoring the theoretical question as to the relative effect of external as compared with internal conditions on the institutions of a society, I believe that in the case of the Barama Caribs external environmental and political factors have played the preponderant part in molding the institutions of this society as they